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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,458	04/01/2004	Randy E. Benway	1213.18584	8394
26308	7590	05/02/2006	EXAMINER	
RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226			LUKS, JEREMY AUSTIN	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/816,458	Applicant(s) BENWAY, RANDY E.	
	Examiner Jeremy Luks	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/8/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1-7 are objected to because of the following informalities: The limitations of these claims fail to describe the claimed hearing device as a "hearing protection device". Therefor the preamble should read "a hearing device". Appropriate correction is required.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landis (5,691,514) in view of Yarush (4,850,023).

With respect to Claim 1, Landis discloses a microphone (Figure 2, #14) coupled (36) to a speaker (32a), wherein said microphone (14) and speaker (32) apparatus is carried by a hat (16) (Col. 2, Lines 15-16). Landis fails to disclose tubing coupled between the speaker and at least one ear of a user. Nevertheless, Yarush discloses

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tubing (Figure 1, #18a) coupled between a speaker (Figure 4, #40) and at least one ear of a user (Col. 5, Lines 48-53).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Landis with the apparatus of Yarush to provide a lower cost listening device capable of connecting to a plurality of audio probes which are capable of detecting and transferring sounds from a variety of mechanical devices, while providing a balanced aural sensation to the user. Additionally, the tubes contribute to acoustical filtering and frequency shaping or resonant amplification, which will allow for cheaper microphones, speakers and processing components within the apparatus.

With respect to Claim 2, Yarush discloses a first length of tubing (Figure 4, #42) coupled to a microphone (38) and a speaker (40), said first length of tubing (42) coupled to a tee (Figures 1 and 4; #22a, 22b), and a second length of tubing (18a) coupled to an ear piece (20).

With respect to Claim 3, Yarush discloses a mono hearing unit (Figure 1, #10), said mono hearing unit (10) providing identical signals to a right ear and a left ear (Col. 3, Lines 33-36).

With respect to Claim 4, Landis discloses a stereo hearing unit (Figure 2, #38), said stereo hearing unit (38) providing different signals to a right ear and a left ear (Col. 4, Lines 31-40).

With respect to Claim 6, Landis discloses the speaker apparatus coupled (Figure 4, #36) below a hat (16) brim (Col. 2, Lines 15-16).

With respect to Claim 5, the Examiner considers that it would have been an obvious matter of design choice to provide a speaker and tubing assembly coupled above a hat brim, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse 86 USPQ 70

With respect to Claim 7, the obvious combination of Yarush and Landis disclose a microphone (Figure 1, #14) and a speaker (32b) are carried by a hat (16) underneath a brim of said hat (16) (Col. 2, Lines 15-16).

With respect to Claim 8, Landis is relied upon for the reasons and disclosures set forth above. Landis fails to disclose a speaker suppressing loud sounds. However, Yarush discloses a speaker (Figure 4, #40) suppressing loud sounds (Col. 8, Lines 51-68).

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pertinent Arts of record relating to hearing protection devices are disclosed in the PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on (571) 272-2800 x33. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jeremy Luks
Patent Examiner

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A handwritten signature in black ink, appearing to read 'E. San Martin', with a stylized flourish at the end.

Edgardo San Martin
Primary Examiner